

ORDINANCE 2005-1375

AN ORDINANCE AMENDING SECTION 156 , ZONING CODE, OF THE CITY OF MURRAY CODE OF ORDINANCES BY CREATING A NEW SECTION ENTITLED CELLULAR ANTENNA TOWER REGULATIONS.

WHEREAS, the City of Murray currently has no provisions for the siting of cellular antenna towers and want to provide the safest and most efficient integration of cellular antenna towers to the community; and

WHEREAS, the regulations as prescribed in KRS Chapter 100.985 through 100.987 are in agreement with the City's comprehensive plan; and

WHEREAS, the Planning Commission held a public hearing with no adverse response from the community; and

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL FOR THE CITY OF MURRAY, KENTUCKY as follows:

CELLULAR ANTENNA TOWER REGULATIONS

(A) **PURPOSE.**

The purposes of these regulations are: to provide for the safest and most efficient integration of cellular antenna towers for cellular telecommunications services or personal communications services within the community; to provide for such facilities in coordination with any recommendations of the comprehensive plan; and to allow for such facilities with the intention for furthering the public health, safety, and general welfare.

(B) **PREAPPLICATION CONFERENCE.**

Applicants are encouraged to notify the Planning Commission to discuss proposals, to allow for early coordination, and to identify those items that are in conformance/nonconformance with the comprehensive plan, zoning ordinance, and the provisions of these regulations.

(C) **DEFINITIONS.**

For the purposes of these regulations, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1. **ALTERNATIVE CELLULAR ANTENNA TOWER.** Man-made trees, clock towers, bell towers, steeples, light poles and similar alternative-design mounting structures that accommodated, camouflage, minimize or conceal the presence of cellular antennas or cellular antenna towers that are constructed primarily for the purpose of accommodating cellular antennas or cellular antenna towers or are reconstructed for the purpose of accommodating cellular antennas or cellular antenna towers. This does not include existing structures erected for another primary purpose, but which subsequently have cellular antennas attached to or located within them, without any reconstruction of the original structure. For the provisions of these regulations, an alternative cellular antenna tower is considered a cellular antenna tower.

2. **ANTENNAS OR RELATED EQUIPMENT.** Transmitting, receiving, or other equipment used to support cellular telecommunications service or personal communications service. This definition does not include towers.
3. **CELLULAR ANTENNA TOWER.** A tower constructed for, or an existing facility that has been adapted for, the locations of transmission or related equipment to be used in the provision of cellular telecommunications services or personal communications services.
4. **CELLULAR TELECOMMUNICATIONS SERVICE.** A retail telecommunications service that uses radio signals transmitted through cell sites and mobile switching stations.
5. **CO-LOCATION.** Locating two or more transmission antennas or related equipment on the same cellular antenna tower.
6. **GUYED CELLULAR ANTENNA TOWER.** A type of wireless transmission tower that is supported by thin guy wires.
7. **LATTICE CELLULAR ANTENNA TOWER.** A self-supporting tower with multiple legs and cross bracing of structural steel.
8. **MONOPOLE CELLULAR ANTENNA TOWER.** A slender self-supporting tower on which wireless antennas can be placed.
9. **PERSONAL COMMUNICATION SERVICE.** Has the meaning as defined in 47 U.S.C. sec. 332(c).
10. **PLANNING COMMISSION.** The City of Murray Planning Commission.
11. **UNIFORM APPLICATION.** An application to construct a cellular antenna tower submitted to the Planning commission in conformity with KRS 100.985 through KRS 100.987.
12. **UTILITY.** As defined KRS 278.010(3).

(D) **GENERAL.**

Cellular antenna towers for cellular telecommunications services or personal communications services may be allowed in any zone after a Planning Commission review in accordance with the following procedures to ascertain agreement with the adopted comprehensive plan and the regulations contained with the zoning ordinance.

(1) **Applicability.**

Every utility, or a company that is engaged in the business of providing the required infrastructure to a utility, that proposes to construct a cellular antenna tower shall submit a completed uniform application to the Planning Commission. Where the Planning Commission finds that circumstances or conditions relating to the application of an alternative cellular antenna tower are such that one or more of the requirements of the

uniform application listed bellow are not necessary or desirable for the protection of surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Planning Commission, or its duly authorized representative, may modify or waive such requirement of the uniform application, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver. The Planning Commission shall not regulate the placement of antennas or related equipment on an existing structure. However, every utility/entity choosing to locate an antenna or related equipment on an existing structure, shall file with the City of Murray Planning Commission the name and address of the entity/utility, the structure(s) upon which the utility/entity plans to place antennas or related equipment and the information set forth in section (d)(2), e, f, r and t below.

(2) **Application requirements.**

Applications for the construction of personal communications services shall comply with KRS 100.9865 and include the following:

- (a) The full name and address of the applicant.
- (b) The applicant's articles of incorporation, if applicable.
- (c) A geotechnical investigation report signed and sealed by a professional engineer registered in Kentucky that includes boring logs and foundation design recommendations.
- (d) A written report prepared by a professional engineer or land surveyor, of findings as to the proximity of the proposed site to flood hazard areas.
- (e) Latitude/Longitude coordinates with associated reference datum, clear directions to the proposed site, including highway numbers and street names, if applicable, with the telephone number of the person who prepared the directions.
- (f) The lease or sale agreement for the property on which the tower is proposed to be located, except that, if the agreement has been filed in abbreviated form with the county clerk, an applicant may file a copy of the agreement as recorded by the county clerk and, if applicable, the portion of the agreement that specifies, in the case of abandonment, a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
- (g) The identity and qualifications of each person directly responsible for the design and construction of the proposed tower.
- (h) A site development plan, signed and sealed by a professional engineer or surveyor licensed in Kentucky, that shows the proposed location of the tower and all easements and existing structures within 500 feet of the proposed site on the property on which the tower will be located, and all easements and existing structures within 200 feet of the access drive, including the intersection with the public street system. Additionally the development plan shall show the following:

1. A survey, prepared by a surveyor licensed in Kentucky. The survey shall be in accordance with all of the requirements of the Murray Subdivision Ordinance and KRS 100, that shows lease lines or property line, which upon approval, shall be recorded.
- (i) A vertical profile sketch of the tower, signed and sealed by a professional engineer registered in Kentucky, indicating the height of the tower and the placement of all antennas.
- (j) The tower and foundation design plans and a description of the standard according to which the tower was designed, signed, and sealed by a professional engineer registered in Kentucky.
- (k) A map, drawn to a scale no less than one inch equals 200 feet, that identifies every structure and every owner of real estate within 500 feet of the proposed tower.
- (l) A statement that every person who, according to the records of the property valuation administrator, owns property within 500 feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed, has been:
 1. Notified by certified mail, return receipt requested, of the proposed construction which notice shall include a map of the location of the proposed construction.
 2. Given the telephone number and address of the City of Murray Planning Commission.
 3. Informed of his or her right to participate in the Planning Commission's proceedings of the application.
- (m) A list of the property owners who received the notice, together with copies of the certified letters sent to the listed property owners.

- (n) A statement that the mayor of City of Murray has been notified, in writing, of the proposed construction and a copy of the notification.
- (o) A statement that Kyle-Oakley Airport Board has been notified, in writing, of the proposed construction and a copy of the notification.
- (p) A statement that:
 - 1. A written notice of durable material at least two feet by four feet in size, stating that “[Name of applicant]” proposes to construct a telecommunications tower on this site” and including the addresses and telephone numbers of the applicant and the Planning Commission, has been posted in a visible location on the proposed site.
 - 2. A written notice, at least two feet by four feet in size, stating that “[Name of applicant] proposes to construct a telecommunications tower near this site” and including the addresses and telephone numbers of the applicant and the Planning Commission, has been posted on the property nearest to the public road.
- (q) A statement that notice of the location of the proposed construction has been published in the Murray Ledger & Times newspaper.
- (r) A brief description of the character of the general area in which the tower is proposed to be constructed, which includes the existing land use for the specific property involved.
- (s) A statement that the applicant has considered the likely effects of the installation on nearby land uses and values and has concluded that there is no more suitable location reasonably available from which adequate service to the area can be provided, and that there is no reasonably available opportunity to locate its antennas and related facilities on an existing structure, including documentation of attempts to locate its antennas and related facilities on an existing structure, if any, with supporting radio frequency analysis, where applicable, and a statement indicating that the applicant attempted to locate its antennas and related facilities on a tower designed to host multiple wireless service providers’ facilities or on an existing structure, such as a telecommunications tower or other suitable structure capable of supporting the applicant’s antennas and related facilities.
- (t) A map of the area in which the tower is proposed to be located, that is drawn to scale, and that clearly depicts the necessary search area within which an antenna tower should, pursuant to radio frequency requirements, be located.

(u) A grid map that shows the location of all existing cellular antenna towers and that indicates the general position of proposed construction sites for new cellular antenna towers within an area that includes:

1. All of the area within the City of Murray Planning Commission's jurisdiction.
2. A one-half mile area outside the boundaries of the City of Murray Planning Commission's jurisdiction, if that area contains wither existing or proposed construction sites for cellular antenna towers.

(3) **Confidentiality of application.**

All information contained in the application and any updates, except for any map or other information that specifically identifies the proposed location of the cellular tower then being reviewed, shall be deemed confidential and proprietary within the meaning of DRS 61.878. The Planning Commission shall deny any public request for the inspection of this information, whether submitted under Kentucky's Open Records Act or otherwise, except when ordered to release the information by a court of competent jurisdiction. Any person violating this subsection shall be guilty of official misconduct in the second degree as provided under KRS 522.030. The confidentiality of the applications and any updates of the application can be waived by the written authorization of the applicant.

(4) **Application fee.**

An applicant for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall pay an application fee of \$2,500.00.

(5) **Processing of application.**

Applications for the construction of cellular antenna towers for cellular telecommunications services or personal communications services shall be processed as follows:

- (a) The Planning Commission shall review the uniform application to determine whether it is in agreement with the Comprehensive Plan and locally adopted zoning regulations.
- (b) At lease one public hearing on the proposal shall be held, at which hearing interested parties and citizens shall have the opportunity to be heard. Notice of the time and place of such hearing shall be published at least once, in the Murray Ledger & Times newspaper, provided that one publication occurs not less than seven calendar days nor more than 21 calendar days before the occurrence of such hearing.
- (c) Notice of the proposed shall be posted on the site at least 14 days in advance of the hearing. The notice shall consist of a written notice, of durable material at least two feet by four feet in size, stating that "[Name of applicant]"proposes to construct a telecommunications tower on this site" and including the addresses and telephone numbers of the applicant and the Planning Commission. Notice of the proposal shall also be posted on the property nearest to the public road. This

notice shall consist of a written notice, of durable material at least two feet by four feet in size, stating that “[Name of applicant] proposes to construct a telecommunications tower near this site” and including the addresses and telephone numbers of the applicant and the Planning Commission.

- (d) Notice of the hearing shall be given at least 14 days in advance of the hearing, by certified mail, return receipt requested, to the owner of every parcel of property within 500 feet of the proposed tower or property contiguous to the site upon which the tower is proposed to be constructed. The notice shall include a map of the location of the proposed construction, the telephone number and address of the Planning Commission and shall inform the addressee of his or her right to participate in the Planning Commissioner’s proceedings on the application. Records maintained by the property valuation administrator may be relied upon conclusively to determine the identity and address of said owner. In the event a property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group that administers property commonly owned by the condominium or cooperative owners. A joint notice may be mailed to two or more co-owners of an adjoining property who are listed in the property valuation administrator’s records as having the same address.
- (e) Upon holding the hearing, the Planning Commission shall, within 60 days commencing from the date that the application is received by the Planning Commission, or within a date specified in a written agreement between the Planning commission and the applicant, make its final decision to approve or disapprove the uniform application. If the Planning Commission fails to issue a final decision within 60 days, and if there is no written agreement between the Planning Commission and the utility to a specific date of the Planning commission to issue a decision, it shall be presumed that the Planning Commission has approved the utility’s uniform application.
- (f) If the Planning commission disapproves of the proposed construction, it shall state the reasons for disapproval in its written decision and may make suggestions which, in its opinion, better accomplish the objectives of the comprehensive plan and the locally adopted zoning regulations. No permit for construction of a cellular or personal communications services antenna tower shall be issued until the Planning Commission approves the uniform application or the sixty (60) day time period has expired, whichever occurs first.
- (g) Upon approval of an application for the construction of a cellular antenna tower by a Planning Commission, the applicant shall notify the Public service Commission within ten (10) working days of the approval. The notice to the Public Service Commission shall include a map showing the location of the construction site. If an applicant fails to file notice of an approved uniform application with the Public Service Commission, the applicant shall be prohibited from beginning construction on the cellular antenna tower until such notice has been made.

(E) **DESIGN STANDARDS.**

The applicant shall provide information demonstrating compliance with the requirements contained herein. Potential sites that should be considered (in order from most-preferred to least-preferred) include existing utility towers, industrial zones, commercial zones, and government buildings and properties. Where the Planning Commission finds that circumstances or conditions relating to the particular application are such that one or more of the requirements listed below are not necessary or desirable for the protection of the surrounding property or the public health, safety, and general welfare, and that such special conditions or circumstances make one or more said requirements unreasonable, the Planning Commission, or its duly authorized representative, may modify or waive such requirement, either permanently or on a temporary basis. Any such modification or waiver shall be requested by the applicant, and the applicant shall submit a written justification for each requested modification or waiver.

(1) **Monopoles.**

Monopole cellular antenna towers shall be permitted in any zone. Lattice and guyed cellular antenna towers shall be permitted in any zone except for residential zones.

(2) **Minimum lot size.**

Regardless of the minimum lot sizes listed in the specific zoning districts, or the Murray Subdivision Ordinance, the lot size may be the minimum necessary to comply with the objectives and standards of this section.

(3) **Setbacks.**

Setbacks for all structures constructed in connection with guyed or lattice cellular antenna towers, except fences and/or guy wires, shall be a minimum distance from the property line or lease line equal to at least the height of the tower, but not less than 50 feet. All structures constructed in connection with monopole or alternative cellular antenna tower shall comply with the applicable setback requirements established for other structures within the applicable zoning district. Alternative cellular antenna towers that are to be located as part of a utility service facility (eg. power pole or telephone pole) shall comply with setback requirements applicable to such utility service facilities, if any.

(4) **Height.**

A cellular antenna tower, or alternative antenna tower structure, may be constructed to a maximum height of 200 feet regardless of the maximum height requirements listed in the specific zoning district. This also applies to any tower taller than 15 feet constructed on the top of another building or structure, with the height being the overall height of building/structure and tower together, measured from the grade to the highest point. The Planning Commission may allow antennas greater than 200 feet in height upon review of the applicant's justification that the additional height meets the criteria identified in subsection (f).

(5) **Construction standards.**

The cellular antenna tower shall be constructed in compliance with the current ANSI/EIA/TIA 222-F standard and other applicable state standards.

(6) **Illumination.**

Cellular antenna towers shall not be illuminated, except in accordance with other state or federal regulations.

- (7) **Staffing.**
The site shall be un-staffed. Personnel may periodically visit the site for maintenance, equipment modification, or repairs. To accommodate such visits, ingress/egress shall be only from approved access points.
- (8) **Fencing.**
Woven wire or chain link (80 percent open) or solid fences made from wood or other materials (less than 50 percent open) shall be used to enclose the site. Such fences shall not be less than four feet and no more than eight feet in height, and may be located within the front, side, or rear yard.
- (9) **Screening.**
Screening shall be provided by evergreen trees, with a minimum height of six feet, planted in a staggered pattern at a maximum distance of 15 feet on center. The screening shall be placed in an area between the property line, or lease line, and a ten foot setback. Screening shall be required when located in or adjacent to a residential zone.
- (10) **Surfacing.**
All driveways and off-street parking areas shall be paved with a durable surface such as asphalt or concrete.
- (11) **Signs.**
There shall be no signs permitted, except those displaying emergency information, owner contact information, warning or safety instructions, or signs that are required by a federal, state or local agency. Such signs shall not exceed six square feet in area.
- (12) **Number of service providers.**
All new cellular antenna towers shall be designed and constructed to accommodate a minimum of three service providers.
- (13) **Lease Agreements.**
All option and site lease agreements shall not prohibit the possibility of co-location, and in the case of abandonment, shall include a method that the utility will follow in dismantling and removing the proposed cellular antenna tower including a timetable for removal.
- (14) **Other approvals required.**
Approval of the Federal Aviation Administration (FAA) and the Kentucky Airport Zoning Commission (KAZC) or documentation where approval is not required shall be submitted prior to the issuance of a building permit for the construction of the cellular antenna tower.

(F) **CRITERIA**

- (1) Approval or disapproval of the proposal shall be based upon an evaluation of the proposal's agreement with the comprehensive plan and zoning regulations.

(a) The Planning Commission may require the applicant to make a reasonable attempt to co-locate additional transmitting or related equipment. The Planning Commission may provide the location of existing cellular antenna towers on which the commission deems the applicant can successfully co-locate its transmitting and related equipment. If the Planning commission requires the applicant to attempt co-location, the applicant shall provide the Planning Commission with a statement indicating that the applicant has:

1. Successfully attempted to co-locate on towers designed to host multiple wireless service providers' facilities or existing structures such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities, and that identifies the location of the tower or suitable structure on which the applicant will co-locate its transmission and related facilities; or

2. Unsuccessfully attempted to co-locate on towers designed to host multiple wireless service provider's facilities or existing structure such as a telecommunications tower or another suitable structure capable of supporting the applicant's facilities and that:

(a) Identifies the location of the towers or other structures on which the applicant attempted to co-located; and

(b) Lists the reasons why the co-location was unsuccessful in each instance.

(b) The Planning Commission may deny a uniform application to construct a cellular antenna tower based on an applicant's unwillingness to attempt to co-locate additional transmitting or related equipment on any new or existing towers or other structures.

(c) The Planning Commission shall not regulate the placement of a cellular antenna tower on the basis of the environmental effects of radio frequency emissions to the extent that the proposed facility complies with the regulations of the Federal Communications Commission concerning radio frequency emissions.

(G) **ABANDONMENT AND DISMANTLING.**

Any cellular antenna tower including but not limited to guyed, lattice and monopole cellular antenna towers, alternative cellular antenna towers, antennas and related equipment)hereinafter referred to as "structure") shall be deemed abandoned when such structure is removed from or no longer in service for a period in excess of thirty (30) days. At the point in time any structure is considered to be abandoned within the meaning of this section, the structure shall be disassembled and removed from the property upon which is located within sixty (60) days thereafter.

(H) **AMENDMENTS.**

Any amendments to plans, except for minor adjustments and determined by the Planning Commission, or its duly authorized representative, shall be made in accordance with the procedure required by subsection (e), subject to the same limitations and requirements as those under which such plans were originally approved.

Nothing in this Ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in this Ordinance; nor shall any just or legal right or remedy of any character be lost impaired or affected by this Ordinance.

All other sections and provisions of the City of Murray Zoning Ordinance, not specifically amended herein, shall remain in full force and effect and shall not be considered amended and shall be incorporated by reference as if fully stated herein.

H. THOMAS RUSHING, MAYOR

ATTEST:

Harla McClure
City Clerk

Introduced by the City Council on April 14, 2005.

Adopted by the City Council on April _____, 2005.

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